

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

PIEDMONT AUTOMOTIVE OUTLET,)	CIVIL ACTION NO. 4:02CV00005
INC., and GENE COCHRAN,)	
)	
Plaintiffs,)	
)	
v.)	MEMORANDUM OPINION
)	
SLM FINANCIAL CORPORATION)	
and BOBBY [BRETT] PRITCHETT,)	
)	
Defendants.)	JUDGE NORMAN K. MOON

This matter comes before the Court on Defendants' Motion to Dismiss pursuant to Fed. R. Civ. Proc. 12(b)(6). Defendants' Motion shall be GRANTED.

I. FACTS

In November, 2001, Plaintiff Gene Cochran, acting as an agent of his employer, Piedmont Automotive, purchased a 1998 Dodge Stratus from the Defendant SLM Financial Corporation at an auction.

On November 13th, the Virginia Department of Motor Vehicles issued SLM a title for the Dodge, the documentation for which stated that the car's odometer read 58,530 actual miles. At the November 16th auction, Mr. Cochran purchased the Dodge from SLM for \$4,300.00 and received a title which lacked any odometer disclosure information. Defendant Bobby Pritchett signed the title on behalf of SLM and gave it to Mr. Cochran.

After accepting the title and the car, Plaintiff Piedmont Automotive began preparing it for

sale and paid \$1,201.15 for its repair. While subsequently inspecting the car, a Piedmont employee, Joel Marlowe, pushed a button on the dashboard, whereupon the digital odometer suddenly changed from approximately 58,000 miles to approximately 101,000 miles.

On December 15th, Mr. Marlowe obtained a vehicle history report from Carfax.com and discovered that the Dodge had been driven approximately 71,000 miles at the time when SLM financed it.

As a result, the Plaintiffs have filed this three-count suit against the Defendants, and have alleged the following Counts: 1) two violations of the Federal Odometer Act, 2) Statutory breach of warranty of title, and 3) common law fraud.

II. RULE 12(b)(6)

When considering a motion to dismiss under Fed. R. Civ. Proc. 12(b)(6), a court must consider all facts and reasonable inferences which may be drawn from the face of the claimants' complaint to determine whether all of the required elements of the claim are present. *Oram v. Dalton*, 927 F. Supp. 180, 184 (E.D. Va. 1996) (citing *Wolman v. Tose*, 467 F.2d 29, 33 n.5 (4th Cir. 1972)). This standard means that all factual allegations in the claimants' complaint must be accepted as true, *Estate Constr. Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 217-18 (4th Cir. 1994), and should be construed liberally. *Schatz v. Rosenberg*, 943 F.2d 485, 489 (4th Cir. 1991). A court may not dismiss the complaint unless it is apparent that the claimants would not be entitled to relief. *Id.* See also *Adams v. Bain*, 697 F.2d 1213, 1216 (4th Cir. 1982) ("a complaint should not be dismissed 'unless it appears to a certainty that the plaintiff would be

entitled to no relief under any state of facts which could be proved in support of his claim.””
(quoting *Johnson v. Mueller*, 415 F.2d 354, 355 (4th Cir. 1969)). *See also Conley v. Gibson*,
355 U.S. 41, 45-46 (1957) (“[A] complaint should not be dismissed for failure to state a claim
unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which
would entitle him to relief.”).

III. ANALYSIS

A reading of the Plaintiffs’ own allegations reveals that the Plaintiffs violated the federal
Motor Vehicle Information and Cost Savings Act (“Odometer Act”). The statute provides, in
relevant part, that “[a] person acquiring a motor vehicle for resale may not accept a written
disclosure under this section unless it is complete.” *See* 49 U.S.C. § 32705(a)(3). The
accompanying regulations further state that, “[t]he transferee shall sign the disclosure statement,
print his name, and return a copy to his transferor.” *See* 49 C.F.R. § 580.5(f).

In their Complaint, the Plaintiffs stated that they received a document in which “SLM did
not complete any odometer disclosure on that title, nor did it make any other disclosures of
odometer information.” As a result, Plaintiffs, who are in the business of buying and re-selling
cars, violated the Odometer Act by accepting an incomplete written disclosure. Notwithstanding
their own admitted wrongdoing, the Plaintiffs now pursue a judgment against the Defendants for
“giving false statements to a transferee . . . or conspiring to do so” and “failing to make the
required odometer disclosures on the title in its possession.”

Nevertheless, district courts have concluded that transferee-wrongdoers are precluded
bringing cross-claims against transferor-wrongdoers under the Federal Odometer Act. For

example, in *Charnetsky v. Gus Paulos Chevrolet*, 754 F.Supp. 188, 190 (D. Utah 1991), a Plaintiff purchaser of a 1984 Chevrolet pickup filed suit against both the operator of the dealership who sold him the truck and dealer who sold the truck to the operator. The court concluded that the odometer statement delivered from the dealer to the operator was flawed: it was unsigned and did not certify that the mileage represented was the actual mileage. *Id.* Later, the operator re-sold the vehicle with a false odometer statement. *Id.* Given the operator's actions, the court concluded that the operator could not "be considered an innocent party in the chain of bad odometer statements," and denied the operator's cross-claim against the dealer as a result. *Id.* "[T]o permit wrongdoers to bring an action against others in the chain would lead a subsequent wrongdoer 'to ignore prior violations of others and to perpetuate the wrongdoing. . . .'" *Id.* (quoting *Stier v. Park Pontiac*, 391 F. Supp. 397 at 401 (S.D. W. Va. 1975)). A court in the Western District of Virginia has also approved this rationale, and has noted that "Congress did not intend that the subsequent wrongdoer might hold liable each prior wrongdoer in a chain linked to the final violation." *See Aldridge v. Billups*, 656 F. Supp. 974 (W.D. Va. 1987).

In *Galano v. McDonald Chevrolet-Oldsmobile*, 644 F. Supp. 940 (W.D. Pa. 1986), a court in the Western District of Pennsylvania applied this logic outside of the cross-claim context. In *Galano*, a Plaintiff automobile dealer who himself rolled back the odometer sued a Defendant used car dealer for rolling back the odometer. *Id.* The court concluded that "reluctance to let a guilty party profit" barred Plaintiff's recovery. *Id.*

Although no one has alleged the Plaintiffs in this case to have rolled back their odometer in the Dodge Stratus, the Court concludes that the Plaintiffs, by their own admissions, have violated the Act. Given the legislative history of this consumer protection statute and that courts

impose a duty on dealers to investigate readily ascertainable information about the title, *see, e.g., Aldridge*, 656 F. Supp. at 978, the Plaintiffs’ acceptance of a deficient disclosure in this case amounts to a significant violation of the Odometer Act. Accordingly, they should be precluded from profiting from the alleged violations of earlier transferors.

Accordingly, Defendants’ Motion to Dismiss shall be GRANTED with respect to the federal Odometer Act claims. In addition, the Defendants’ Motion to Dismiss with respect to the state breach of title and fraud claims shall also be GRANTED. *See* 28 U.S.C. 1367(a) (“district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction.”).

U.S. District Judge

ENTERED: _____

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Defendants.)	JUDGE NORMAN K. MOON

For the reasons articulated in the accompanying MEMORANDUM OPINION,
Defendants' Motion to Dismiss shall be, and hereby is, GRANTED.

It is so ORDERED.

The Clerk of the Court is directed to send certified copies of this ORDER to all Counsel
of record and to strike this case from the docket.

U.S. District Judge

ENTERED: _____